No. 16-1466

In the

Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE* ECONOMISTS AND PROFESSORS OF LAW AND ECONOMICS IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES ii

INTRODUCTION 1

INTEREST OF THE *AMICI CURIAE* 4

SUMMARY OF THE ARGUMENT 9

ARGUMENT 10

I. Early discussions of free-rider problems 10

II. *The Logic of Collective Action* 12

III. Theoretical and empirical studies of free riding after *The Logic of Collective Action* 17

IV. Economic theory and empirical evidence refute the arguments of Petitioner and his *amici* regarding free riders 21

CONCLUSION 25

TABLE OF CITED AUTHORITIES

Page

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Page

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INTRODUCTION

Amici curiae are leading economists, including three Nobel laureates, along with distinguished professors of law and economics, who submit this brief to discuss the free-rider problem this Court identified in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).[1] In *Abood*, the Court declined to interfere with legislative decisions that collecting fees from employees who are covered by union agreements, but are not union members, helps "distribute fairly" the costs of union representation "among those who benefit." *Id.* at 222. Fair-share fees counteract "the incentive that employees might otherwise have to become 'free riders'—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees." *Id.*

Petitioner seeks to overturn *Abood* by arguing that nonmembers who are required to pay fair-share fees are "forced riders." Pet. Br. 53. According to Petitioner, employees who believe they benefit from the union will join it and pay their dues, whereas nonmembers seek to avoid paying fair-share fees based on their alleged "beliefs that they do not benefit from a union's advocacy." *Id.* at 52. Petitioner asserts that those purported beliefs "cannot be second guessed." *Id.*

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[1] The parties have filed blanket consents to the filing of *amicus curiae* briefs. No party or counsel for any party authored any part of this brief, nor funded its preparation or submission.

If nonmembers' beliefs cannot be second guessed, however, they also cannot be *presumed* without any evidentiary basis, especially not as a pretext for overturning forty years of precedent; interfering with states' legislative decisions; and, under the guise of the First Amendment, presumptuously attributing beliefs to millions of people who do not actually hold those beliefs. Petitioner has not provided any evidence to support his assumptions about nonmembers' allegedly common beliefs and motivations with regard to unions and their fees. That evidentiary failure should be fatal because Petitioner's assumptions contradict decades, if not centuries, of economic theory and empirical evidence. As Mancur Olson demonstrated, a rational employee motivated solely by economic self-interest will withhold union dues or fair-share fees if he can do without incurring countervailing costs—*even if he benefits from the union, believes he benefits, and agrees with the union's actions on his behalf*—because his fees "alone would not perceptibly strengthen the union, and since he would get the benefits of any union achievements whether or not he supported the union." Mancur Olson, *The Logic of Collective Action* 88 (2d ed. 1971).

The existence of such free-rider problems is well established, including among conservative economists. *See, e.g.*, Milton Friedman, *Capitalism and Freedom* 23 (1962); Thomas Sowell, *Basic Economics* 433-36 (4th ed. 2011); Walter J. Wessels, *Economics* 536-37 (4th ed. 2006). Free-rider problems, and collective-action problems more

generally, "are not mere curiosities, paradoxes, or aberrations of otherwise efficient markets. They underlie every aspect of human activity and have profound political and economic consequences." Marek M. Kaminski, *The Collective Action Problems of Political Consolidation: Evidence from Poland, in Collective Choice* 71, 71 (Jac C. Heckelman & Dennis Coates eds., 2003).

Indeed, free-rider problems were nearly fatal to the Union under the Articles of Confederation, as Alexander Hamilton observed. The notion "that a sense of common interest would preside over the conduct of the respective members, and would beget a full compliance with all the constitutional requisitions of the Union," was disproven by "that best oracle of wisdom, experience," as contrary to "the true springs by which human conduct is actuated." The Federalist No. 15, at 110 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Despite their common interests, each member "yielding to the persuasive voice of immediate interest or convenience has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads and to crush us beneath its ruins." *Id.* at 112-13.

What was true of the Union is also true of unions. Unless ameliorated by fair-share fees, the free-rider problem will leave unions weaker than employees (union members *and nonmembers* alike) would choose. Where fair-share fees are eliminated, in so-called Right to Work ("RTW") jurisdictions, nonmembers' withholding of financial support does

not imply antipathy to unions. Instead, it follows from individual self-interest and the collective nature of the benefits unions provide, even in the absence of any disagreement about those benefits. That is the essence of the free-rider problem.

INTEREST OF THE *AMICI CURIAE*

Amici curiae are thirty-six distinguished economists and professors of law and economics. They occupy prominent positions at preeminent universities and institutions, and include three Nobel laureates, two recipients of the American Economic Association's prestigious John Bates Clark Medal, and two past Presidents of the American Economic Association. They have no personal stake in the outcome of this case, but have an interest in assisting this Court in understanding the free-rider problem at issue here.

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SUMMARY OF THE ARGUMENT

Petitioner's assertion that fair-share fees are unnecessary, and his assumption that employees seek to avoid paying fair-share fees because of commonly-held "beliefs that they do not benefit from a union's advocacy," Pet. Br. 52, are incorrect and unfounded. In fact, "*rational, self-interested individuals*" often "*will not act to achieve their common or group interests,*" *even when they agree about those common interests and how to achieve them*. Olson, *supra*, at 2 (emphasis in original). This is not only well established in economic theory, it is

also confirmed by empirical data—including the results of recent union-recertification elections.

ARGUMENT

I. Early discussions of free-rider problems

Mancur Olson's work on free-rider problems is seminal because he analyzed them using the formal tools of modern economics, but such problems were well recognized long before 1965, when Olson first published *The Logic of Collective Action*. In 1738, for example, David Hume observed that two neighbors might easily agree to work together to drain a meadow, but "it is very difficult, and indeed impossible, that a thousand persons should agree in any such action," because each would seek "a pretext to free himself of the trouble and expence, and would lay the whole burden on others." David Hume, *A Treatise of Human Nature* 366 (Cavalier Classics 2015) (1738). "Here then is the origin of civil government and society. Men are not able radically to cure, either in themselves or others, that narrowness of soul," but may agree to provide "security" against each others' "weakness and passion, as well as against their own," through government, which "forces them to seek their own advantage, by a concurrence in some common end or purpose." *Id.* at 365.

As already mentioned, Alexander Hamilton discussed the free-rider problems the states faced under the Articles of Confederation. *See* The Federalist No. 15 (Alexander Hamilton). Likewise,

James Madison argued that "the radical infirmity of the 'Articles of Confederation' was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of the others." 2 *Papers of James Madison* 692 (Henry D. Gilpin, ed., 1840). Madison "came to view free-riding as the central vice of the Confederation," and his reasoning is remarkably similar to that of "modern public goods theorists, such as Mancur Olson." Keith L. Dougherty, *Madison's Theory of Public Goods, in James Madison* 41, 43, 57 (Samuel Kernell, ed., 2003); *see also* Keith L. Dougherty, *Collective Action under the Articles of Confederation* (2001).

John Stuart Mill also recognized that the "interference of law" is sometimes required, "not to overrule the judgment of individuals respecting their own interest, but to give effect to that judgment." John Stuart Mill, *Principles of Political Economy Books IV and V* 329 (Penguin Classics 1985) (1848). Suppose factory workers, bargaining collectively, could limit the length of their workday without a significant reduction in wages. "If this would be the result, and if the operatives generally are convinced that it would, the limitation, some may say, will be adopted spontaneously." *Id.* But "it will not be adopted unless the body of operatives bind themselves to one another to abide by it," because however convinced a worker may be that "it is the interest of the class to work short time, it is contrary

to his own interest to set the example, unless he is well assured that all or most others will follow it." *Id.* Thus, "there might be no means of attaining this object but by converting their supposed mutual agreement into an engagement under penalty, by consenting to have it enforced by law." *Id.* at 330.

More recently—but still a few years before Olson published *The Logic of Collective Action*—Milton Friedman explained that "I cannot get the amount of national defense I want and you, a different amount. With respect to such indivisible matters we can discuss, and argue, and vote. But having decided, we must conform." Friedman, *supra*, at 23.

II. *The Logic of Collective Action*

Olson began *The Logic of Collective Action* with the observation that it is "often taken for granted, at least where economic objectives are involved, that groups of individuals with common interests usually attempt to further those common interests." Olson, *supra*, at 1. It is likewise often assumed, as Petitioner assumes here, that if a member of a group does not act to further the group's interests, he or she must not agree with the group. *See id.* at 85. These assumptions not only underlie Petitioner's brief, they also underlie Marxism, anarchism, and pluralism, as Olson explained. *See id.* at 102-31. But the shared assumption of these disparate theories—that rational individuals voluntarily advance collective interests—is often false. For example, "despite the force of patriotism, the appeal of the national ideology, the bond of a common culture, and

the indispensability of the system of law and order, no major state in modern history has been able to support itself through voluntary dues or contributions." *Id.* at 13.

Olson defined a collective good (also referred to as a common or public good) as one that, if consumed by anyone in a group, "cannot feasibly be withheld from the others in the group." *Id.* at 14. Olson showed that the "larger a group is, the farther it will fall short of obtaining an optimal supply of any collective good, and the less likely that it will act to obtain even a minimal amount of such a good." *Id.* at 36.[2] Collective goods are more likely to be provided in small groups because it is more likely that some individual will conclude that his personal benefits exceed his personal costs, but even then, the amount of the public good will be sub-optimal, and "*there is a systematic tendency for 'exploitation'*" by free riders. *Id.* at 29 (emphasis in original).[3]

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[2] Olson provided a formal proof, but its details are omitted here. For discussion of those details, and more sophisticated mathematical models, *see, e.g.*, Todd Sandler, *Collective Action* 19-94 (1992); and Per Molander, *The Prevalence of Free Riding*, 36 J. Conflict Resol. 756 (1992).

[3] As Olson noted, the "moral overtones of the word 'exploitation' are unfortunate; no general moral conclusions can follow from a purely logical analysis. Since the word 'exploitation' is, however, commonly used to describe situations where there is a disproportion between the benefits and sacrifices of different people, it would be pedantic to use a different word here." Olson, *supra*, at 29 n.47. The same is true of the term "free rider." It may sound like a moral criticism, but it describes

A collective good may be provided if there is some quantity of it that "can be obtained at a cost sufficiently low in relation to its benefit that some one person in the relevant group would gain for providing that good all by himself." *Id.* at 22. By definition, however, that person will not be able to prevent others from consuming the collective good. "Since an individual member thus gets only part of the benefit of any expenditure he makes to obtain more of the collective good, he will discontinue his purchase of the collective good before the optimal amount for the group as a whole has been obtained." *Id.* at 35. And "the amounts of the collective good that a member of the group receives free from other members will further reduce his incentive to provide more of that good at his own expense." *Id.* The result is sub-optimal levels of the collective good, and exploitation of anyone who provides it by those who benefit without paying—*i.e.*, free riders. *See id.*

Olson showed how his analysis applies to unions, which provide collective goods. "A labor union works primarily to get higher wages, better working conditions, legislation favorable to workers, and the like; these things by their very nature ordinarily cannot be withheld from any particular worker in the group represented by the union." *Id.* at 76. Moreover, union benefits that were already collective goods *de facto* were made so *de jure* when the "Wagner Act made collective bargaining a goal of public policy, and stipulated that whenever the

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perfectly rational behavior. *See, e.g., id.* at 76-91.

majority of the employees in a bargaining unit voted for a particular union in a representation election, the employer *must* bargain collectively with that union about *all* the employees in that bargaining unit." *Id.* at 79 (emphases in original).

Despite the benefits unions provided, however, they commonly suffered from lack of participation and financial support. *See id.* at 85. "Those opposed to unions could argue that this proves that the union shop forces men who do not agree with the policies of the union to remain in the organization, and is evidence that the workers do not really favor unions, much less compulsory membership." *Id.* But that argument "stumbles over the fact that impartially conducted elections have shown again and again that unionized workers support union-shop provisions." *Id.* In elections held under the Taft-Hartley Act, the proponents of which "apparently thought that workers would often throw off union-shop provisions in free elections," unions instead "won all but four out of the 664 union-shop elections held" in the first four months after the Act passed, "with more than 90 percent of the employees voting for compulsory union membership. In the first four years, 44,795 union shops were authorized in such elections; 97 percent of the elections were won by the unions." *Id.* As discussed below, union-recertification elections held in Iowa in October 2017 show similar results. *See* Section IV, *infra*.

The results of such elections may seem paradoxical. "*Over 90 per cent will not attend meetings or participate in union affairs; yet over 90*

per cent will vote to force themselves to belong to the union and make considerable dues payments to it." Olson, *supra*, at 86 (emphasis in original). But there is no paradox. Voting for a union yet failing to support it with one's own time and money is "*a model of rationality*," because, although workers overwhelmingly believe they benefit from strong unions, each individual "will get the benefits of the union's achievements" whether he contributes or not, "and will probably not by himself be able to add noticeably to those achievements." *Id.* (emphasis in original).

Workers who vote for unions yet do not contribute to them are like citizens who vote for taxes yet "usually strive to contribute as little as the tax laws allow (and on occasion even less)." *Id.* at 87. Indeed, there "is no less infringement of 'rights' through taxation for the support of a police force or a judicial system than there is in a union shop. . . . To be consistent, those who base their case against the union shop solely on 'right to work' grounds must also advocate the 'unanimous consent' approach to taxation." *Id.* at 88-89. But that approach is generally (and quite rightly) dismissed as absurd. "Collective bargaining, war, and the basic governmental services are alike in that the 'benefits' of all three go to everyone in the relevant group, whether or not he has supported the union, served in the military, or paid the taxes. Compulsion is involved in all three, and has to be," because the "union member, like the individual taxpayer, has no incentive to sacrifice any more than he is forced to

sacrifice," *id.* at 90-91, *even if "there is perfect consensus" about the value of the union*, *id.* at 60 (emphasis in original).

III. Theoretical and empirical studies of free riding after *The Logic of Collective Action*

Like any seminal work—and "few books in economics have achieved the wide-ranging, lasting, and profound impact of *The Logic of Collective Action*"—Olson's book "paved the way for new insights, applications, and the need for still further refinements." Sandler, *supra*, at 1, 200. For example, research in behavioral economics helps refine Olson's analysis by recognizing that individuals do not uniformly behave like the wealth maximizers generally assumed in economic theory.

Although "between 20 and 30 percent of the subjects" in experiments "behave completely selfishly," others behave reciprocally—that is, they will cooperate if they believe others are doing the same, but will punish free riding, even if the costs of doing so are greater than a person motivated solely by profit would be willing to incur. Ernst Fehr & Simon Gächter, *Fairness and Retaliation: The Economics of Reciprocity*, 14 J. Econ. Perspectives 159, 162 (2000). "The stability of reciprocal behavior suggests that it has deep evolutionary roots." *Id.* at 163 n.2.

Reciprocal behavior can sustain cooperation, *up to a point*, despite free riding—which helps explain why unions in RTW jurisdictions do not disappear

overnight.[4] But if free riding cannot be prohibited, it is contagious. The "self-interested types choose to free ride because they are self-interested, and reciprocal types free ride because they observe others free riding." *Id.* at 164. The end result, "in the absence of a punishment opportunity," is that "average cooperation converges to very low levels in the later periods." *Id.* at 165; *see also, e.g.*, Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action, and Law*, 102 Mich. L. Rev. 71, 79 (2003) (explaining the importance of "trust and reciprocity," as opposed to mere wealth maximization, while observing that "some coercive mechanism remains necessary" to counteract free riding).

Theoretical and empirical research continues to confirm that "the existence of free-riding or noncooperative behavior should be considered not as an aberration but rather as something to be expected in groups with more than two members." Molander, *supra*, at 768. Free riding has been observed and analyzed in all sorts of situations, by all sorts of economists—left, right, and center. Conservative economist Thomas Sowell, for example, explained that even if "everyone agrees that the benefits of

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[4] Studies of reciprocal behavior also support the conclusion that fair-share fees help preserve labor peace, and serve employers' interests, by obviating disruptive manifestations of the "powerful motives [that] drive the punishment of free riders." Ernst Fehr & Simon Gächter, *Cooperation and Punishment in Public Goods Experiments*, 90 Am. Econ. Rev. 980, 980 (2000).

mud flaps greatly exceed their costs, there is no feasible way of buying these benefits in a free market, since you receive no benefits from the mud flaps that you buy and put on your own car, but only from mud flaps that other people buy and put on their cars and trucks." Sowell, *supra*, at 433-34. The solution is to pass laws "requiring all cars and trucks to have mud flaps on them." *Id.* at 434.

Sowell also emphasized that the free-rider problem can emerge *even when there is overwhelming agreement about the value of collective benefits*. Consider national defense:

> Given the indivisibility of the benefits, even some citizens who fully appreciate the military dangers, and who consider the costs of meeting those dangers to be fully justified by the benefits, might still feel no need to spend their own money for military purposes, since their individual contribution would have no serious effect on their own individual security, which would depend primarily on how much others contributed. In such a situation, it is entirely possible to end up with inadequate military defense, even if everyone understands the cost of effective defense and considers the benefits to be worth it.

Id. National defense is a prototypical example of the potential for free riding, but the phenomenon is ubiquitous, occurring not only in connection with

union fees, but also church donations,[5] deficits,[6] NATO contributions,[7] vaccinations,[8] and in countless other contexts. *See, e.g.*, Sandler, *supra*, at 95-192.

In sum, it is well established that free riding follows from individual economic self-interest in the context of collective goods, even when everyone agrees that they benefit from those goods. If individuals are not required to contribute, many who undisputedly benefit will nevertheless withhold their contributions out of simple self-interest, and others will withhold their contributions to avoid being taken advantage of by the free riders. A committed core may be able to sustain itself and provide some amount of the collective good, but even if some contributors persevere, the amount of the collective good will be sub-optimal, and will tend to decrease further and further below the optimum as the contagion of free riding spreads, resulting in increasing exploitation of the dwindling contributors.

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[5] *See* Brooks B. Hull et al., *Free Riding, Market Structure, and Church Member Donations in South Carolina*, 52 Rev. Religious Res. 172 (2010).

[6] *See* Winfried Horstmann & Friedrich Schnieder, *Deficits, Bailouts and Free Riders: Fiscal Elements of a European Constitution*, 47 KYKLOS 355 (1994).

[7] *See* Sandler, *supra*, at 99-106.

[8] *See* Yoko Ibuka et al., *Free-Riding Behavior in Vaccination Decisions: An Experimental Study*, 9 PLoS One 1 (2014).

IV. Economic theory and empirical evidence refute the arguments of Petitioner and his *amici* regarding free riders

Despite established economic theory and empirical evidence, Petitioner and his *amici* assert that eliminating fair-share fees will have little effect on union membership and collective bargaining, and will not increase free riding, but instead will merely liberate "forced riders." *See, e.g.*, Pet. Br. 51-53; Br. *Amici Curiae* Buckeye Inst. for Pub. Pol'y Sols. et al. ("Buckeye Br."). Those assertions are incorrect.

The contention that overruling *Abood* and outlawing fair-share fees for public unions "is unlikely to cause a significant decline in union membership or spending," Buckeye Br. 5, is both false and disingenuous.[9] As the Congressional Research Service found, in a study on which the Buckeye Institute itself relies, "the union membership rate in union security states," which allow fair-share fees, "is nearly three times that of RTW states," which do not. Benjamin Collins, Cong. Research Serv., R42575, *Right to Work Laws: Legislative Background and Empirical Research* 7

[9] Common sense and the statements of Petitioner's own *amici* leave no doubt that Petitioner brought this case, and his *amici* support it, precisely because overruling *Abood* will decimate union membership and finances. As one of Petitioner's *amici* told its supporters, if this Court overturns *Abood*, "millions" of public employees "will opt out" of paying dues or fees, with disastrous effects for public unions across the country. Freedom Foundation Fundraising Letter, Oct. 2017.

(2014). Although some researchers have posited that "RTW laws reflect a state's preexisting opposition to unions," *id.* at 8, studies that control for "underlying attitudes about unionization" show that "RTW laws exert an independent and strongly negative effect on union" membership, Raymond Hogler et al., *Right-to-Work Legislation, Social Capital, and Variations in State Union Density*, 34 Rev. Regional Stud. 95, 96, 109 (2004).

RTW laws "reduce the ability of unions to organize workers and to develop workplace institutions conducive to collective bargaining." *Id.* at 109. This is "not an artifact of underlying anti-union attitudes." *Id.*; *see also, e.g.*, Ozkan Eren & Serkan Ozbeklik, *What Do Right-to-Work Laws Do? Evidence from a Synthetic Control Method Analysis*, 35 J. Pol'y Analysis & Mgmt. 173, 193 (2016) ("Our results indicate that the passage of RTW laws in Oklahoma significantly decreased private sector unionization rates."); Robert Bruno et al., *The Economic Effects of Adopting a Right-to-Work Law: Implications for Illinois*, 40 Lab. Stud. J. 319, 325 (2015) ("One area where there is a general consensus among researchers is on the negative effects that RTW laws have on union membership and union power."). Anti-union sentiment is "not a compelling explanation" for the significant reduction in union organization and membership in RTW jurisdictions. Casey Ichniowski & Jeffrey S. Zax, *Right-to-Work Laws, Free Riders, and Unionization in the Local Public Sector*, 9 J. Lab. Econ. 255, 273 (1991). Olson's explanation remains the most compelling.

"Free riders protected by right-to-work laws substantially reduce union membership and collective bargaining." *Id.* at 273-74.

Furthermore, Petitioner's contention that nonmembers who pay fair-share fees are "forced riders" is dramatically refuted by the results of recent recertification elections in Iowa. Under Iowa's new collective-bargaining law, public-sector unions must be recertified every time they face a new contract negotiation—typically every two or three years. *See* Brianne Pfannenstiel, ***In biggest vote since new law, Iowa public unions overwhelmingly choose to recertify***, Des Moines Reg., Oct. 25, 2017. They also must win approval from a majority of all employees covered by their collective-bargaining agreements; not just a majority of those who vote in the election. *See id.*; Iowa Code § 20.15(2)(b).

The election results for AFSCME Iowa Council 61 show that *eighty-three percent* of all employees covered by the union's collective-bargaining agreements affirmatively voted to recertify the union. Only fifteen percent failed to vote. And only *two percent* voted against the union.[10] Yet *seventy-one percent* of the employees are free riders, in the sense that they are covered by union agreements, but are not members of the union, and do not pay fair-share fees because Iowa is an RTW state. Thus,

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[10] Note, moreover, that even those who voted against recertification do not necessarily oppose union representation; they may desire such representation, only by a different union.

a mere *twenty-nine percent* of employees (the union members) pay *all* of the costs of collective bargaining that the *vast majority* of employees *agree they benefit from*, and *affirmatively voted for*, yet decline to contribute to because RTW laws allow employees to obtain those benefits without paying for them.

Even the two percent of employees who voted against the union and (presumably) do not contribute to it are "free riders whom the law *requires* the union to carry—indeed, requires the union to go *out of its way* to benefit, even at the expense of its other interests." *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 556 (1991) (Scalia, J., concurring in the judgment in part and dissenting in part) (emphases in original); *see also id.* at 562 (Kennedy, J., joining this part of Justice Scalia's opinion). And of the remaining *ninety-eight percent*, those who accept union benefits without payment *or* objection are *certainly* free riders.[11]

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[11] The Buckeye Institute relies heavily on an article hypothesizing that the proportion of "true free riders" is closer to thirty percent. *See* Russel S. Sobel, *Empirical Evidence on the Union Free-Rider Problem: Do Right-to-Work Laws Matter?*, 16 J. Lab. Res. 347 (1995). But Sobel derives that percentage from a theoretical analysis "based on the assumption that the current covered nonmembers could *costlessly switch to identical nonunion jobs*." *Id.* at 361 (emphasis added). Sobel estimates that seventy percent of nonmembers would switch to an identical nonunion job if they could do so costlessly and thereby avoid paying union dues. He calls these individuals "induced riders," but they are simply free riders who are somewhat less attached to their union job than the other thirty percent. As Sobel makes clear, none of them are motivated by any

Moreover, employees who are covered by collective-bargaining agreements but do not contribute to the union are free riders whom the law requires not only the union, but *individual union members* to subsidize. Legislatures are right to establish fair-share fees to offset what would otherwise be a forced subsidy from union members to nonmembers. The First Amendment does not preclude this "elimination of the inequity that would otherwise arise from mandated free-ridership." *Id.* at 556 (Scalia, J., concurring in the judgment in part and dissenting in part).

CONCLUSION

Thus, the Court should not overturn *Abood*.

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ideological disagreement with the union. *See id.* at 353-55. They simply weigh their marginal economic benefits against their marginal costs, and conclude that if they can obtain identical benefits without paying union dues, they will. *See id.* at 353-55, 361. *All* of them are free riders in the classic sense.